IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8678 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

VITHALBHAI LAXMANBHAI SARVAIYA

Appearance:

1. Special Civil Application No. 8678 of 2002
MRS VASAVDATTA BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/01/2004

ORAL JUDGEMENT

The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") through its Divisional Controller being aggrieved of the judgement and award dated 19.12.2001 in Reference (LCJ) No.165 of 1999. The learned Judge of the Labour Court, Junagadh was pleased to allow the reference in part and was pleased to quash and set aside the order dated 16.4.1998 and was pleased to order reinstatement within 30 days with 40% back

wages, with continuity of service.

2. The case of the petitioner corporation is that on the day of the incident, i.e. 28.1.1998 the respondent, driver was driving Bus No.1735 on Veraval-Rangpur route. He was driving the bus in a very rash, negligent and zigzag manner, and was applying the breaks in an indiscriminate manner. Therefore, near I.D. Chauhan High School in Veraval all the passengers of the bus, stopped the driver and informed the conductor of the bus that the driver is in drunken condition. On this happening the driver got down the bus and ran away in another bus bearing no.3022 of Galadar-Veraval. Charge sheet was issued to the respondent on 29.1.1998. Show Cause Notice was issued on 14.3.1998. Ultimately dismissal order was passed on 16.4.1998. It is recorded by the learned Judge that the respondent did not reply either to the charge sheet or to the show cause notice. Still however, only on the ground that the Department has not examined any of the passengers, whose statements were recorded or the conductor who was on the bus on the day of the incident, the learned Judge though it fit to exercise the discretion under section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The learned Judge overlooked a very important aspect of the matter, namely, the respondent by filing exhibit 33 gave a go by to the challenge to the validity of the departmental inquiry. Without giving any heed to exhibit 33, only because the Department has not examined the passengers, whose statements were recorded and the conductor who was on duty was not examined, the learned Judge has held that the incident is not proved. The learned Judge should have taken into consideration the defence put forward by the respondent workman and should have tested the same on the touchstone of the probability. It is on record of the case that the defence of the respondent workman was that he was not feeling well on that day. He had chest pain. It is his case that after having felt unwell he drew the bus slowly and parked the same on the side of the road and then took treatment in a Municipal hospital. The learned Judge before exercising discretion should have asked the respondent for the supporting material. The learned Judge without there being a justifiable reason exercised the discretion under section 11A of the Act. While exercising the discretion under section 11A of the Act, the learned Judge became generous to a person who endangered the lives of the passengers in the bus.

3. The learned Judge has committed an error in overlooking the service record of the respondent workman.

The default card of the respondent workman was placed before the learned Judge, the first instance recorded therein on 22.1.1992 pertains to an accident, wherein a cyclist was hit by the bus and he died before he could be taken to a doctor. In 1991 again the respondent while driving the bus bearing Registration No.GJ1 T 9716 of Bhesan-Ranpur route, dashed with a tree and the bus fell into a ditch, wherein 23 passengers had sustained injuries. For no valid reason the learned Judge has shown charity to the respondent workman and has granted him reinstatement with continuity of service with 40% back wages.

4. The respondent workman is present before the Court and he has given Purshis that he does not want to engage any advocate. The said Purshis is taken on record. The learned Judge has taken note of two judgments of this Court, namely, (i) in the matter of Municipal Corporation of the City of Ahmedabad Vs. Hussainmiya Chandmiya, reported in 1986 GLH 1047 wherein this Court had an occasion to discuss the scope of section 11A of the Act, the learned Judge has not discussed the said judgement, a mere mention is made. The decision in the matter of Gujarat State Road Transport Corporation Vs. J.N. Valand, reported in 1996 (1) GLH 948 is also mentioned but not discussed. In this case also the Court had an occasion to observe as to in what circumstances discretion under section 11A of the Act is to be exercised by the Labour Court. The learned Judge has committed serious error in not taking into consideration the aforesaid two judgements and not discussing anything about the principles laid down by those judgements. The learned Judge ought to have given due consideration to the aspect that in what manner principles laid therein do not apply to the facts of the present case.

5. In view of the aforesaid discussion, the present petition is allowed. Rule is made absolute. The judgement and award dated 19.12.2001 is hereby quashed and set aside. No order as to costs.

(Ravi R. Tripathi, J.)
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